



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, OLC, MNDCT

Introduction

The tenants apply for a compliance order to address the alleged failure of the landlord to quell the disturbances coming from the rental unit above this one. They also seek a retroactive rent rebate arguing that the amenity of their rental unit has been reduced as a result of the disturbances.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing and only if referred to by a party.

Issue(s) to be Decided

Has the landlord failed in its statutory duty to provide the tenant with freedom from unreasonable disturbance? If so, should there be a compliance order of some kind and should the tenants be compensated?

Background and Evidence

The rental unit is an apartment in a “six-plex” building of three levels. This tenancy started in May 2018 under a different property manager (listed as the landlord in the tenancy agreement). The respondent property manager in this application took over in February of this year. The rent is \$922.00 per month. The landlord holds a \$450.00 security deposit.

The tenants describe the disturbance from the tenant above as:

stomping, thumping, hammering dropping of heavy objects which cause pictures to fall of the wall, plaster to fall from the ceiling, as well as stress of machines running throughout the day and night.

Ms. B.S. says the problems started in September of last year. She thinks the noises began when the tenant above started a landscaping business. She thinks he's been using his apartment as a workshop.

She is also concerned about the fire safety of this older building.

Ms. N.S. for the landlord testifies that the prior property manager left two notes regarding the tenant above, one indicating that he had no equipment or propane in his apartment on viewing it.

Analysis

Section 28 of the *Residential Tenancy Act* (the "Act") provides that a tenant is entitled to freedom from unreasonable disturbance. When it comes to disturbances being created by other tenants in an apartment building, it is the landlord's duty, once informed, to conduct an investigation that is reasonable in the circumstances, to determine the foundation of the complaint and, if necessary, take necessary action against the creator of the disturbance.

In this case, the landlord (or prior landlord) has apparently viewed the upper tenant's suite and determined that the heavy equipment complained of was not there. The current landlord has sent out a general letter to those involved, asking that they respect the need for quiet in the building.

In the circumstances of this case I find I cannot grant the tenants the relief they claim. The evidence in support of their claim is simply too vague for me to conclude 1) they have been unreasonably disturbed, and 2) the landlord has failed in its duty.

What the tenants' evidence lacks is objectivity. The dates and times of occurrences should be listed, even in a general way, in order to avoid unhelpful phrases like "all the time" or "frequently." In this modern world a recording of the noise is very common. I note that Ms. B.S. has a cell phone with which disturbances could be recorded. This objective evidence is usually provided to the landlord to promote and assist in its investigation. If possible it is best to contact the landlord while any disturbance is actually happening, so that if audible it can be heard and so the landlord can investigate

while it is happening. Landlords are obliged by law to post contact numbers in the building.

The tenants note that the noise has cracked plaster in their suite and knocked pictures down. A photo of such damage would have been helpful.

The lack of all this evidence at this hearing prevents me from concluding the landlord has fallen short in its duty and it would have prevented me from making any determination about loss of amenity the tenants might have suffered as a result of the noise.

Conclusion

The application is dismissed.

It should be noted that this application deals only with alleged unreasonable disturbance up to the date the tenants made this application. Any occurrences after that or after this decision are grounds for a new complaint and, in the event the complaint is not resolved, a new application by the tenants.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 27, 2020

Residential Tenancy Branch